LIBRARY
SUPREME COURT U S

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 512.

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,

Petitioner,

—against—

EUGENE T. SINGER.

No. 527.

EUGENE T. SINGER,

Petitioner,

—against—

THE YOKOHAMA SPECIE BANK, LIMITED,

and

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of The Yokohama Specie Bank, Ltd.

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF FOR THE SUPERINTENDENT OF BANKS.

EDWARD FELDMAN,
Attorney for Superintendent of Banks
80 Spring Street
New York 12, N. Y.

Of Counsel:
DANIEL GERSEN,
HENRY L. BAYLES.

THE COURT PRESS, 136 Cedar Street, N. Y. C.

INDEX.

TABLE OF CASES AND OTHER AUTHORITIES:

Cases:

Statutes:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 512.

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of Yokohama Specie Bank, Ltd.,

Petitioner,

—against—

EUGENE T. SINGER.

No. 527.

EUGENE T. SINGER,

Petitioner,

—against—

THE YOKOHAMA SPECIE BANK, LIMITED,

and

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property in the State of New York of The Yokohama Specie Bank, Ltd.

BRIEF FOR THE SUPERINTENDENT OF BANKS OF THE STATE OF NEW YORK.

Cross-petitions for writs of certiorari were filed with this Court by the Superintendent of Banks on December

29, 1949, and by plaintiff, Eugene T. Singer, on January 4, 1950. Both petitions were granted on February 20, 1950.

This brief will deal with the questions presented by both petitions.

Opinions Below.

The instant case was twice appealed to the Court of Appeals. Opinions of that court appear in 293 N. Y. 542 (R. 525)* (motion for reargument denied 294 N. Y. 689) and 299 N. Y. 113 (R. 530) (motion for reargument denied 300 N. Y. 459 (R. 586)). An amendment of the remittitur appears in 299 N. Y. 791 (R. 541).

The Supreme Court, County of New York, also rendered opinions on both appeals. Neither was officially reported, but unofficial reports appear in 47 N. Y. S. 2d 881 and in the New York Law Journal of February 20, 1947, page 695 (R. 508). No opinion was rendered by the Appellate Division on either appeal—see 267 App. Div. 980 and 273 App. Div. 996.

Questions Presented.

Plaintiff seeks in this action to establish a claim against the New York Agency of a foreign banking corporation in liquidation by the Superintendent of Banks of the State of New York. Three questions are presented by the cross-petitions for certiorari:

1. Did the transaction upon which plaintiff's claim is based fall within the prohibitions of Executive Order

* References in parentheses are to pages in the Record on Appeal.

No. 8389,* as amended, and the rules and regulations issued pursuant thereto?

2. Do such Order, rules and regulations prevent the accrual or creation of a claim based upon a prohibited transaction and render it void or do they merely prevent payment until an appropriate federal license is obtained?

3. Do any of the documents in the record constitute an appropriate federal license of the transaction upon which plaintiff's claim is based?

The second of these questions is presented by the Superintendent's petition; the first and third by plaintiff's cross-petition.

Jurisdiction of This Court.

The judgment of the Court of Appeals was rendered on April 15, 1949 (R. 539). A motion for reargument was made on July 8, 1949 (R. 590). This motion was denied on October 6, 1949 (R. 586). The jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U. S. C. Section 1257.

The federal question presented for review by the Superintendent was presented to and necessarily passed upon by the New York courts. The provisions of the Executive Order were pleaded as a complete and separate defense in the answer of the Superintendent (R. 19-21) and on the trial of the action a conclusion of law based upon this defense was proposed to and refused by the trial court (R. 83). This defense was briefed and argued

* This Order which was issued pursuant to Section 5 (b) of the Trading with the Enemy Act of October 6, 1917, and the rules and regulations issued pursuant thereto were approved and confirmed by the Joint Resolution of both houses of Congress of May 7, 1940 (App., p. 47), and by Section 302 of the First War Powers Act of 1941 (App., p. 49).

to the Supreme Court, the Appellate Division and the Court of Appeals on both appeals including both motions for reargument. The second motion for reargument was devoted exclusively to this question.

While the opinions of the Court of Appeals deal with the question somewhat indirectly, the amended remittitur is specific in stating that it was presented to and necessarily passed upon by the court. It reads in part as follows (R. 542):

> "A federal question was presented and necessarily passed upon by this court, viz: it was held that the provisions of Executive Order No. 8389, as amended, and the rules and regulations issued pursuant thereto did not prevent the accrual or creation of the claim sued upon or render such claim void, but merely prevented the payment of the claim until an appropriate federal license is obtained, and that the documents in evidence do not constitute such license."

Statutes Involved.

The relevant provisions of Section 5 (b) of the Trading with the Enemy Act, as amended, and of Executive Orders Nos. 8389 and 9193, as amended, and of the rules and regulations issued pursuant thereto, are set out in the appendix *infra* at pages 47 to 76. The relevant provisions of the Banking Law of the State of New York are set forth in the appendix *infra* at page 77.

Statement.

Synopsis of Facts.

This action was brought to establish plaintiff's right to participate in the liquidation of the New York Agency of the Yokohama Specie Bank, Ltd. The Yokohama Specie

Bank, Ltd. was a Japanese banking corporation with its head office in Yokohama. Prior to the war this corporation, pursuant to license granted by the Superintendent of Banks, maintained an agency in the City of New York which was authorized to conduct a limited banking business (Complaint, Par. 2, R. 9; Ex. Z, R. 477 (332)).* On the outbreak of the war, the Superintendent, pursuant to Section 606 (4) of the Banking Law, took possession of this New York Agency for the purpose of liquidation (Complaint, Par. 13, R. 11; Ex. EE, R. 489 (334)).

The claim asserted by plaintiff in this action is based upon an attempted remittance of funds from Japan to New York on August 29, 1941. Plaintiff's assignor, the Standard Vacuum Oil Company (Ex. 9, R. 370 (120)) is a Delaware corporation with its head office in New York (Complaint, Par. 1, R. 9; 94-5). Prior to the war it maintained a branch in Yokohama, Japan (R. 95), which was engaged in the business of importing and selling petroleum products and of remitting the proceeds to New York. Such remittances were made pursuant to licenses obtained from the Japanese Government (R. 128-31; Exs. 19-22, R. 382-97 (502)). Prior to August 29, 1941 and during the months of February and March, 1941, Standard, pursuant to licenses issued by the Japanese Government (Exs. 19-22, R. 382-97 (502)) had entered into four forward exchange contracts with the Yokohama office of the Yokohama Specie Bank, Ltd., under the terms of which the Yokohama office of the bank agreed to remit by "T.T."** to Standard in New York the sum of $557,561.25 upon payment by Standard in Yokohama of the yen equivalent amounting to Yen 2,378,928 (Exs. 23-26, R. 398-405 (562)). These exchange contracts and the licenses pursuant to which they were made were cancelled by the Japanese

* Parentheses within the parentheses refer to the pages of the Record on Appeal at which the exhibits referred to were offered in evidence.

** The expression "T.T." appearing in these contracts and elsewhere in the Record refers to telegraph transfers (R. 326).

Government during the latter part of July, 1941 in connection with the imposition of freezing controls upon American concerns in Japan (Ex. A, R. 406 (131); R. 131-2), but they were reinstated on or about August 27, 1941 (R. 133-2). On that date Standard in Yokohama advised its New York office that it would remit the sum of $557,561.25 to Standard in New York on the following Friday, August 29, 1941 (Ex. 1, R. 345 (171)).

On August 29, 1941, the Yokohama office of Standard directed the Yokohama office of the bank to debit Standard's account at that office with the sum of Yen 2,378,928 and to remit the dollar equivalent thereof to Standard in New York (Stipulation, R. 503). The Yokohama office of the bank thereupon made the indicated debit to Standard's accounts and credited the dollar account of the New York Agency on its books with $557,561.25. At the same time it cabled the Agency to pay the said sum of $557,561.25 to Standard in New York (Stipulation, R. 503; Ex. 11, R. 371 (182); Ex. S, R. 450 (265); Ex. 7, R. 358 (119)), thereby authorizing the Agency, upon making the payment, to debit the amount thereof against the dollar account maintained by the Yokohama office of the bank with the Agency (R. 245-6, 323).

Long prior to this transaction, however, the President of the United States had promulgated Executive Order No. 8389, prohibiting certain transactions by, or on behalf of, or involving property of, certain foreign countries and their nationals. On July 26, 1941, more than a month before the attempted remittance to New York, the provisions of this Executive Order were made applicable to Japan and its nationals (Executive Order No. 8832 (6 F. R. 3715)) (App., p. 49). Moreover, on July 26, 1941, a representative of the United States Treasury Department had been placed in charge of the Agency to insure compliance with the Order (R. 279-86, 252-4, 288-9, 301-2). A license from the Treasury Department and the approval of the Treasury Supervisor were required before the Agency could enter into transactions

covered by the Order (R. 284-285, 341-342, 252-4, 284, 258-9, 263, 274, 326).

Accordingly the Agency neither debited the account of its Yokohama office nor made payment to Standard of the sum specified in the cable of August 29, 1941, but instead advised Standard orally and in writing that the instructions had been received and that upon issuance of a license payment would be made* (Ex. 7, R. 358 (119); R. 193, 208-14).

Upon being notified of this, Standard on the same day filed an application with the Federal Reserve Bank of New York, directed to the Secretary of the Treasury, for an appropriate license under the Executive Order (Ex. F, R. 417-23 (155)). On October 15, 1941, the Federal Reserve Bank notified Standard that its application for a license involved a question of basic policy which was then receiving the active consideration of the Treasury Department, and that Standard would be promptly notified when a decision had been reached (Ex. G, R. 424 (156)). Thereafter on December 29, 1941, a supplemental application for a license was filed by Standard (Ex. E, R. 412-6 (155)). Both the original and supplemental applications were subsequently denied by the Treasury Department on January 14, 1942 and January 13, 1942, respectively (Exs. H and I, R. 425-6 (156)).** No entry was ever made on any of the books of the Agency with respect to the transaction (Ex. EE, R. 489 (334)) and payment was never effected.

---

* The evidence of the latter fact was disputed by the Superintendent but the state courts nevertheless so found (R. 36), and this Court must so assume.

** This action was in accord with the views of the Treasury Supervisor who, at the time the application was filed, recommended that it be denied (302). It was the general policy of the Supervisor to refuse to allow any payments except for obligations of the Agency in existence prior to the date when the Order was made effective as to Japanese nationals (R. 285-9).

On December 8, 1941 the Superintendent took possession of the Agency for the purpose of liquidation pursuant to the provisions of Section 606 (4) of the Banking Law (Complaint, Par. 13, R. 11; Ex. EE, R. 489 (334)). On December, 19, 1941, the Superintendent received from the Treasury Department a license authorizing him to pay administration expenses out of the blocked property of the Agency (Ex. AA, R. 479 (333)). On January 14, 1942, he obtained a license authorizing him to liquidate the assets and pay the creditors of the Agency, subject to the stipulation, among others, that transactions involving blocked nationals other than the Agency could be effected only if authorized by a general or specific license.

On September 28, 1942, the Alien Property Custodian, without vesting the property of the Agency, undertook the supervision of its liquidation by the Superintendent (Ex. CC, R. 482 (333), and instructed the Superintendent to continue the liquidation and to submit claims to him prior to acceptance (Ex. 16, R. 378 (228)).

Thereafter, on October 29, 1942 the Superintendent received a letter from the Treasury Department stating that in view of the Supervisory Order issued by the Alien Property Custodian the Superintendent was authorized, so far as the Treasury Department was concerned, on and after such date to engage in any transaction which might be engaged in without a specific license from the Treasury Department by a person not a national of any blocked country, and calling to the attention of the Superintendent the possible applicability of the rules and regulations of the Alien Property Custodian (Ex. 17, R. 380 (229)).

Subsequent thereto and on February 15, 1943, the Custodian vested title to the excess proceeds of the assets in the hands of the Superintendent remaining after payment by him of the creditors entitled to share under New York law in the liquidation of the Agency (Ex. DD, R. 485 (333)). On August 25, 1942, the Superintendent called for the filing of claims (Complaint, Par. 15, R. 12)

and on November 21, 1942 Standard filed the proof of claim upon which this action is based (Ex. 8, R. 358-68 (119)). This claim was rejected by the Superintendent on February 11, 1943 (Ex. 8, R. 369 (119)). On August 19, 1943, Standard assigned its claim to plaintiff (Ex. 9, R. 370 (120)) reserving, however, all beneficial interest therein (Ex. J, R. 431 (156)) and on the same day this action was commenced.

Prior Proceedings.

Section 606 (4) of the Banking Law of the State of New York (App., p. 77) provides that the only creditors of a foreign banking corporation who may participate in the liquidation of its New York assets are those whose claims arise out of transactions with its New York Agency.* After such creditors (who are denominated as "preferred creditors") have been paid, the surplus remaining must be transmitted by the Superintendent to the principal office or domiciliary liquidator of the foreign corporation. Creditors of the corporation whose claims do not arise out of transactions with its agency must look for payment of their claims to such principal office or domiciliary liquidator (*Orvis* v. *Bell*, 294 N. Y. 844, aff'g without opinion 268 App. Div. 851, aff'g without opinion 182 Misc. 616).** In order for a claim to fall within the statutory preference the transaction out of which it arose must be such as to give rise to an enforcible obligation against the Agency (R. 528).

The question to be determined in the instant case, therefore, was whether the New York Agency of the Yokohama

---

* The statute also provides that creditors "whose names appear as creditors on the books" of the Agency may participate in its liquidation. This provision, however, is not relevant to the instant case for plaintiff's name did not appear as a creditor on the books of the Agency (R. 44).

** In the instant case, as indicated above, the Alien Property Custodian vested the surplus remaining after payment of the "preferred" creditors (Ex. DD, R. 485 (333)).

Specie Bank had come under an enforcible obligation to make a payment to plaintiff and particularly whether the prohibitions of the federal freezing regulations served to prevent the creation of such an obligation. The Superintendent maintained that the attempted remission of funds from Japan to New York fell squarely within the provisions of the Executive Order prohibiting transactions in foreign exchange, transfers of credit and payments by and to banking institutions and, therefore, could not serve as a basis for an enforcible legal obligation. He further maintained that the transaction of August 29, 1941 constituted an attempted transfer of an interest in blocked property. Treasury Department General Ruling No. 12 (App., p. 60) provides that all such transfers after the effective date of the Order are "null and void" and cannot serve as a "basis for the assertion or recognition of any right, remedy, power or privilege with respect to" such property.

In 1944 the Superintendent moved for summary judgment. The motion was granted by the New York Supreme Court and the Appellate Division, but the judgments of these courts were reversed by the Court of Appeals. That court held that the facts recited in the papers before it, if true, "served to create an enforcible legal obligation by the New York Agency" to make a payment to Standard (R. 528), and thereby constituted plaintiff a creditor of the Agency entitled to share in its liquidation (R. 525). The court evidently treated the transaction in suit as if a cable transfer of credit from Japan to New York had been effected (notwithstanding the prohibitions of the Order), thus putting the Agency in funds to make payment to Standard upon procurement of an appropriate federal license. The court stated (R. 528):

> "When on August 27, 1941, Yokohama Specie at its home office in Japan accepted funds from Standard it thereby became indebted to Standard in the amount

then deposited. When on August 29, 1941, following instructions from Standard, and acting under its New York license, Yokohama Specie transmitted these funds by cable from Japan to its New York Agency, we think the consequent oral and written communications, to which reference has been made—by which the New York Agency advised Standard that it was in funds from its Yokohama home office which it was instructed to pay to Standard—served to create an enforcible legal obligation by the New York Agency to make such payment."

The court rejected the argument that the provisions of the Executive Order prevented the creation of the obligation, and held that they served merely to prevent payment until an appropriate license had been obtained. It further held that the documents in the record before it did not constitute such a license. Its holding in these respects appears somewhat obliquely from its statements that (R. 528):

"The fact that Federal regulations governing transactions in foreign exchange prevent the payment to Standard until a license under Executive Order No. 8389, as amended, is procured does not make conditional the obligation of the New York Agency to pay. (See United States Treasury Department, General Ruling No. 12 (4) under Executive Order No. 8389 as amended; also *Feuchtwanger* v. *Central Hanover Bank*, 288 N. Y. 342.)

"* * * Any payment of funds by Yokohama Specie's New York Agency to Standard as an incident of such transaction is subject to the provisions of Executive Order No. 8389, as amended."

The case was thereupon remitted to the Supreme Court for trial (R. 529).

The trial court, following the decision of the Court of Appeals, held that plaintiff had established his right to participate in the liquidation of the Agency (R. 44, 90-1, 508-9). In addition, that court held that payment of plaintiff's claim had been licensed by the Treasury Department letter of October 29, 1942, referred to above at page 8.* This judgment was affirmed by the Appellate Division in all respects.

The Court of Appeals reversed the lower courts upon the question of whether payment had been licensed and held that neither the letter of October 29, 1942, nor the other documents in evidence licensed the payment of plaintiff's claim. However, the Court affirmed the judgment of the lower courts upon the major question here involved. Although explicitly holding that plaintiff's claim was based upon a prohibited and unlicensed transaction it nevertheless held that the claim was an accrued and established one and was, therefore, entitled to recognition.

Accordingly the court directed the entry of judgment for plaintiff for the principal of his claim, such claim to constitute (R. 541)

> "a preferred claim payable out of the assets of the Yokohama Specie Bank Ltd., in the possession of the defendant * * *."

In this fashion the court reaffirmed its holding on the first appeal as to the effect of an unlicensed transaction. It stated its holding in this regard in precise form for the first time in its amended remittitur, which is quoted above at page 4.

---

* This holding is not explicitly made but appears from the fact that the trial court refused to condition payment of plaintiff's claim upon the procurement of an appropriate federal license and awarded interest to plaintiff upon the principal of his claim from the date of this letter (R. 44, 90-1).

Specification of the Errors to Be Urged.

The Court of Appeals erred in holding that the prohibitions of Executive Order No. 8389, as amended, and the rules and regulations issued pursuant thereto do not prevent the accrual or creation of an obligation predicated upon a prohibited transaction or render such transaction void, but merely prevent payment of such an obligation until an appropriate license is obtained.

Summary of Argument.

The holding of the Court of Appeals that the Executive Order did not prevent the accrual or creation of an obligation predicated upon a prohibited transaction, but served merely to prevent payment of the obligation so created, is contrary to the decision of this Court in *Propper* v. *Clark*, 337 U. S. 472. The issues in both cases are substantially identical and the result should be the same.

There can be no question that the transaction upon which plaintiff's claim is based fell within the prohibitions of the Executive Order as a transfer of credit, a transaction in foreign exchange, a dealing in an evidence of indebtedness, and a payment prohibited by Section 1 of that Order. It is equally clear that plaintiff's claim rests upon this prohibited transaction and the Court of Appeals expressly so held.

However, the Court of Appeals improperly gave effect to this prohibited transaction by holding that plaintiff's claim was an accrued and established one and the result was to shift to plaintiff an interest in the blocked property of the Agency. In arriving at this result the Court of Appeals gave to Executive Order No. 8389 and General Ruling No. 12, issued pursuant thereto, an interpretation which is diametrically opposed to the interpretation accorded them by this Court in the *Propper* case.

That portion of the decision of the Court of Appeals which holds that payment of plaintiff's claim has never been licensed is clearly correct. None of the documents contained in the record even remotely purport to license the creation of a claim or to validate past transactions. At best, they merely authorize the Superintendent in general terms to pay the claims of the creditors of the Agency, and permit him to engage in such transactions as could be engaged in by a domestic bank. Since the transaction in suit was to be entered into pursuant to the direction of blocked nationals and involved property of such nationals, it could not be entered into by a domestic bank except upon specific license.

POINT I.

The Executive Order prevented the accrual or creation of plaintiff's claim.

As has been indicated, the primary reason for the Superintendent's appeal in this case is that, in his opinion, the decision of the New York Court of Appeals is in direct conflict with the decision of this Court in *Propper* v. *Clark*, 337 U. S. 472 (1949), and with numerous decisions of district and circuit courts (*Bernstein* v. *N. V. Nederlandsche-Amerikaansche*, 173 F. 2d 71 (C. A. 2d; 1949); *The Kotkas*, 35 F. Supp. 983 (E. D. N. Y., 1940); *Okihara* v. *Clark*, 71 F. Supp. 319 (D. Hawaii, 1947); *Clark* v. *Chase National Bank*, 82 F. Supp. 740 (S. D. N. Y., 1948); *Hayden Chemical Corp.* v. *Clark*, 85 F. Supp. 949 (S. D. N. Y., 1948); Cf. *Blank* v. *Clark*, 79 F. Supp. 373 (E. D. Pa., 1948)). Since this conflict is upon a point of federal law it should be resolved in favor of the view set forth in the controlling federal decisions. (*Propper* v. *Clark*, *supra*.)

There is, we believe, no room for doubt as to the existence of this conflict. The New York court held in substance that the only effect of Executive Order No. 8389 was to prevent payment in consummation of a prohibited transaction. This Court and the other federal courts have held that

> "The language of the order prohibits more than payment. It prohibits transfers of credit". *Propper v. Clark* (337 U. S. 472, 486)

In *Propper v. Clark* the New York Supreme Court, subsequent to the extension of freezing controls to Austria, had appointed the petitioner receiver of the New York assets of an Austrian corporation (AKM). The statute under which the court acted provided that title to such property should pass to the receiver upon his appointment. The question presented to this Court was whether the Executive Order prevented the transfer to the receiver of an interest in the frozen property. The Court held that in the absence of a license the receiver acquired no interest whatsoever in such property.

The arguments presented to this Court in the *Propper* case were strikingly similar to those presented to the Court of Appeals in the instant case. In both it was argued (a) that the provisions of the Executive Order did not apply to the transaction in suit, and (b) that even if the Order did apply its needs could be served by a provision against payment without a license.

The first of these arguments was overruled in the *Propper* case by a holding that both the receiver of AKM and ASCAP, its debtor, were "banking institutions" within the meaning of the Order and that the indebtedness constituted a "credit" whose transfer was prohibited by the Order (337 U. S. 472, 482). The second argument was overruled by the holding of this Court that in the

absence of a license the receiver of AKM acquired no title to or interest in the indebtedness.

It is respectfully submitted that these holdings are controlling on the present appeal.

(a) The provisions of the Executive Order applied to the transaction in suit.

Executive Order No. 8389* prohibits all transfers of credit between a banking institution within the United

* Section 1 of the Executive Order (App., p. 49) provides:

"Section 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

"A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

"B. All payments by or to any banking institution within the United States;

"C. All transactions in foreign exchange by any person within the United States;

"D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

"E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

"F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions."

States and a banking institution abroad (§ 1 A), all transactions in foreign exchange by persons within the United States (§ 1 C), all payments by or to any banking institution within the United States (§ 1 B), and all dealings in evidences of indebtedness by persons within the United States (§ 1 E), when such transactions involve property of blocked nationals or are to be entered into "by, or on behalf of, or pursuant to the direction of" such nationals (§ 1).

The Order was unmistakably aimed at controlling transactions like that in suit which, in the words of the statute, was to be entered into "by, or on behalf of, or pursuant to the direction of" the Yokohama offices of the bank and Standard, both of whom were blocked nationals, and involved the property of the Agency as well as the account maintained with it by the Yokohama office of the bank, all of which constituted property of blocked nationals.

The transaction contemplated a "transfer of credit" (Cf. *Leguiti* v. *Mechanics & Metals National Bank*, 230 N. Y. 415 at 419, *Singer* v. *Yokohama Specie Bank, Ltd.*, 293 N. Y. 542 at 549) between a "banking institution"*

* The term "banking institution" is defined to include (Section 5 F):

> "any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or broker; and, *each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate 'banking institution'*." (Emphasis supplied)

Not only were the Yokohama office of the Yokohama Specie Bank and the New York Agency of that bank "banking institutions" within the meaning of Section 5 F of the Executive Order, but in addition, Standard's Yokohama and New York offices were also "banking institutions," as defined therein, for they were

[Footnote continued on following page.]

within the United States" and a "banking institution outside of the United States" within the meaning of Section 1A of the Order. In addition it involved a "transaction in foreign exchange" by persons within the United States (Standard and the New York Agency) within the meaning of Section 1C of the Order.* Again, it involved a payment "to" a "banking institution within the United States" (the transfer from the Yokohama office of the bank to the Agency) and a payment "by" a "banking institution within the United States" (the payment by the Agency to Standard in New York) within the meaning of Section 1B of the Order. Yet again, it involved a dealing in an "evidence of indebtedness" (the credit on

---

[Footnote continued from preceding page.]

engaged incidentally in the business "of purchasing or selling foreign exchange" (Exs. 2, 2A, R. 346-9 (109); Ex. 14, R. 374 (189); Exs. 19-26, R. 382-405 (502); R. 98-9, 129-30). In addition, each of such offices of Standard "held credits for others" within the meaning of such section of the Order as construed by this Court in the *Propper* case (Ex. 3, R. 350-1 (114); Ex. 5, R. 354-5 (116); Exs. B, C, D, R. 407-11 (146); Ex. F, R. 417 (155); Exs. K, L, M, R. 438-43 (217, 221, 222); Exs. II, JJ, R. 498-501 (503); R. 121, 124, 137-8, 143-4, 168-70, 218).

* Plaintiff argued in the courts below that the provisions of paragraph C did not apply because the foreign exchange contracts were entered into in February and March, 1941, prior to the extension of freezing controls to Japan. While it is, of course, true, that the contracts were entered into prior to July 26, 1941, the attempted performance of these contracts was clearly a transaction in foreign exchange occurring subsequent to the effective date of the Order. It was not until August 29, 1941, that Standard paid to the Yokohama office of the Yokohama Specie Bank, Ltd., the yen equivalent of the dollars it desired to remit to New York (Stipulation, R. 503). It also appears (plaintiff's assertion to the contrary notwithstanding) that the original foreign exchange contracts were cancelled and were reinstated subsequent to the effective date of the Freezing Order. See the statements (made *ante litem motam*) contained in the telegram of July 28, 1941 from Standard's Yokohama office to Standard in New York (Ex. A, R. 406 (131)) and in their letter dated September 8, 1941 (Ex. 2, R. 346-7 (109)).

the books of the Agency) within the meaning of Section 1 E of the Order. And finally, the transaction involved the creation of an interest in blocked property. General Ruling No. 12, issued on April 21, 1942, provides that the creation of such an interest is and always has been prohibited by Executive Order No. 8389, and this Court in the *Propper* case held that the Order was effective of its own force to prevent shifts in title to blocked property. (See *infra*, p. 26 *et seq.*).

It follows that the transaction in question fell within the ambit of Executive Order No. 8389. That plaintiff's claim rests upon this prohibited transaction clearly appears from the opinions of the Court of Appeals. Thus, in its first opinion, it said (R. 528):

> "When on August 27, 1941, Yokohama Specie at its home office in Japan accepted funds from Standard it thereby became indebted to Standard in the amount then deposited. When on August 29, 1941, following instructions from Standard, and acting under its New York license, Yokohama Specie transmitted these funds by cable from Japan to its New York Agency, we think the consequent oral and written communications, to which reference has been made—by which the New York Agency advised Standard that it was in funds from its Yokohama home office which it was instructed to pay to Standard—served to create an enforcible legal obligation by the New York Agency to make such payment."

And in its second opinion, it said (R. 531):

> "The transaction here engaging our attention falls within the ambit of Federal orders and regulations which became effective in July, 1941, a month before the acts underlying plaintiff's claim were performed in Japan * * *.
>
> "A survey of the underlying facts leaves no doubt that plaintiff's claim *rests upon a transaction which*

was subject to the licensing requirements." (Emphasis supplied.)

And (R. 534):

"* * * the transmittal of funds which they (the Yokohama branches of Standard and the bank) directed *constituted a prohibited transfer* and could be effected—* * * 'only as authorized by a general or specific license'. Plaintiff, *claiming under such a transfer*, was not freed from the necessity of showing that consummation of the transfer was elsewhere authorized." (Emphasis supplied.)

And (R. 536):

"* * * Since the transfer of funds involved the foreign office of the Yokohama bank and Standard's Japanese office, both nationals of Japan, and was to be performed at the direction of the foreign bank, it was a prohibited transfer * * *."

(b) The decision of the Court of Appeals improperly gave effect to a prohibited transaction by permitting the assertion of a claim predicated thereon.

Although the New York court found that plaintiff's claim was based upon a prohibited transaction, it nevertheless held that the Executive Order did not prevent such transaction from giving rise to (R. 528)—

"an enforcible legal obligation by the New York Agency to make such payment"

nor prevent the establishment of plaintiff's right to share in the liquidation fund in the hands of the Superintendent upon the basis of an "accrued"* claim. The court di-

* See opinion in the companion case of *Banque Mellie 'Iran* v. *Yokohama Specie Bank, Ltd.*, 299 N. Y. 139 at 144, also appearing in that Record on Appeal (*Lyon* v. *Banque Mellie Iran*, Nos. 513 and 528) at p. 351.

rected the entry of judgment against the Superintendent declaring that the amount thereof "shall constitute a preferred claim payable out of the assets of the Yokohama Specie Bank Ltd." in the possession of the Superintendent (R. 541).

If the opinions of the Court of Appeals left any doubts as to its holding upon this issue, its amended remittitur would lay such doubts to rest. The remittitur states (R. 542):

> "A federal question was presented and necessarily passed upon by this court, viz.: it was held that the provisions of Executive Order No. 8389, as amended, and the rules and regulations issued pursuant thereto did not prevent the accrual or creation of the claim sued upon or render such claim void, but merely prevented the payment of the claim until an appropriate federal license is obtained * * *."

In so holding the New York court seems to have treated the unlicensed transaction as if it were valid and enforcible in every respect, except that payment of the obligation thereby created was not to be made until a license was procured. In arriving at its decision the court cited (*supra*, p. 11) paragraph 4 of General Ruling No. 12 issued by the Treasury Department and *Feuchtwanger* v. *Central Hanover Bank*, 288 N. Y. 342. The *Feuchtwanger* case is not here material, for the plaintiff there based his claim upon property rights which were in existence when the Executive Order came into effect. General Ruling No. 12 (App., p. 60) provides, in part, as follows:

> "(1) Unless licensed or otherwise authorized by the Secretary of the Treasury, (a) any transfer after the effective date of the Order is null and void to the extent that it is (or was) a transfer of any property in a blocked account at the time of such transfer;

and (b) no transfer after the effective date of the Order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account (irrespective of whether such property was in a blocked account at the time of such transfer).

* * * *

"(4) Any transfer affected by the Order and/or this general ruling and involved in, or arising out of, any action or proceeding in any Court within the United States shall, so far as affected by the Order and/or this general ruling, be valid and enforceable for the purpose of determining for the parties to the action or proceeding the rights and liabilities therein litigated: *Provided; however,* That no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license."

Apparently the New York court construed this ruling as if it provided that the provisions of the Executive Order were to be totally disregarded insofar as the determination by the courts of the legal consequences of operative acts is concernod, and held that the sole effect of the prohibitions of the Order is to prevent payment, either voluntarily or under judicial compulsion, until a license has been obtained. In so holding, the court appears to have disregarded the very explicit language of paragraph 4 of the ruling and the no less unequivocal language of paragraph 1 of the ruling.

As will be noted above, the latter paragraph of the ruling declares that any unlicensed transfer of property in a blocked account "after the effective date of the order is null and void" and that such transfers cannot be "the

basis for the assertion or recognition of any right, remedy, power or privilege with respect to or interest in" such property. Treasury Department Press Release No. 34 of April 21, 1942 (App., p. 64), which attended the issuance of General Ruling No. 12, announced that the Treasury Department formally ruled that "all unlicensed transfers of blocked assets in the United States are void and unenforceable" and that even in the absence of General Ruling No. 12 they "always have been void and unenforceable".

Moreover, the proviso in paragraph 4 of General Ruling No. 12 specifically stipulates that no judgment or other judicial process "shall confer or create a greater right, power, or privilege" with respect to blocked property "than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license". In this connection Public Circular No. 31, issued August 2, 1946 (App., p. 71) flatly states:

> "the judicial process cannot, without a license or other authorization from the Secretary of the Treasury, operate to transfer or create any interest in blocked property".

The subsequent decision of the Court of Appeals in *Leeds* v. *Guaranty Trust Company*, 297 N. Y. 1019 (affg. without opinion 272 App. Div. 909, which affd. without opinion, 65 N. Y. S. 2d 431), is the logical result of the interpretation placed by that court in the *Singer* decision on paragraph 4 of General Ruling No. 12, and reveals the extent to which the court was willing to weaken the prohibitions of paragraph 1 of that ruling. In that case the plaintiff brought suit upon an unlicensed assignment of property in a blocked account made by one blocked national to another. The assignor repudiated the assignment and set forth the provisions of the Executive Order as an affirmative defense. Despite the fact that the language of paragraph 1 of the General Ruling had been

tailored to fit this type of situation,* upon motion by the plaintiff, an order was entered striking this defense from the answer as insufficient in law, and on appeal the order was affirmed. This is a striking instance of the creation of enforcible legal rights in the very teeth of the provisions of General Ruling No. 12 that no prohibited transaction should "be the basis for the assertion or recognition of any right, remedy, power or privilege."

The interpretation accorded to General Ruling No. 12 by the Court of Appeals is diametrically opposed to the interpretation accorded to it by this Court in *Propper* v. *Clark*. There, as here, the petitioner contended that General Ruling No. 12 must be interpreted to permit litigation as to rights in frozen assets, but this Court observed that although the ruling does not necessarily prohibit litigation, the proviso contained in paragraph 4 of the ruling "limits the rights a litigant may obtain to such right as the owner of blocked property could confer by voluntary act" (337 U. S. 472, 485) and it held that since the owner could not voluntarily transfer title to the credit in question no interest therein could be obtained by the receiver until the transaction was first licensed.**

In the *Propper* case the receiver, basing his contentions upon the decisions of the Court of Appeals in the *Singer* and *Leeds* cases, had argued that the purpose of the Executive Order would be served by a simple inhibition upon unlicensed payments and that litigation concerning frozen property could proceed to judgment without regard to the Executive Order, so long as

> "the *result* of the litigation, *i.e.* the *judgment*, * * * is subject to the screening process." (Reply Br., p. 26).

* Press Release No. 34 (App., p. 68).

** Since the General Ruling was promulgated after the suit by the receiver was started, the court held that it was not determinative of the case, but that it was "useful only as a statement of the administrative determination as to the effect of litigation without a license".

In commenting upon the receiver's argument, this Court said (p. 482):

> "It is petitioner's contention that a mere freezing order does not prohibit a subsequent judicial order transferring title to blocked assets covered by the previous freezing order. * * * Petitioner's argument is that such a construction would immobilize frozen property until it suits the Custodian's convenience to vest, contrary to the need for protection against transfers of foreign funds. These needs, petitioner says, will be served by the provision against payments to claimants from frozen funds without a license."

In over-ruling these objections this Court stated (p. 484):

> "The freezing order of June 14, 1941, immobilized the assets covered by its terms so that title to them might not shift from person to person except by license, until the Government could determine whether those assets were needed for prosecution of the threatened war or to compensate our citizens or ourselves for the damages done by the governments of the nationals affected."

and (p. 486):

> "We base our determination on the purpose of Congress to prevent shifts in title to blocked assets and the prohibition of the Executive Order against transfers of such a credit as this. The language of the order prohibits more than payment. It prohibits transfers of credit."

On the basis of such holding this Court in effect abrogated the unequivocal direction of the New York statute, that upon appointment of a receiver title to the New York property of a foreign corporation should vest in him. This Court held that the order of the Supreme

Court appointing the receiver, being unlicensed, was totally ineffective to transfer any interest in the property.*

In *McGrath* v. *Manufacturers Trust Co.*, 338 U. S. 241, this Court reaffirmed its holding as to the effect of the Executive Order by commenting in a footnote as follows (p. 250):

> "See also, *restrictions on assertion, without a federal license*, of any right of setoff which did not exist before June 14, 1941. Executive Order No. 8785, §§ 1 A and 1 E, 1 CFR Cum. Supp. 948, and see *Propper* v. *Clark*, 337 U. S. 472." (Emphasis supplied.)

Other federal decisions have been to the same effect. (See cases cited *supra*, p. 14.)

(c) The decision of the Court of Appeals improperly gave effect to a prohibited transaction by permitting the creation of an interest in blocked property.

The decision in the *Singer* case gave effect to a prohibited transaction not only by permitting the assertion of a claim predicated thereon, but also by permitting a shift in title to blocked property. This follows from the fact that if the decision of the Court of Appeals were sustained its effect would be to shift to Singer a portion of the blocked credit which appeared on the books of the Agency in favor of its Yokohama office** (R. 245-6, 323-4).

---

* See generally upon the effects of unlicensed transactions: Berger & Bittker, *Freezing Controls: The Effect of an Unlicensed Transaction*, 47 Col. L. Rev. 398 (1947); Reeves, *The Control of Foreign Funds by the United States Treasury*, 11 Law and Contemporary Problems, 17, 44-9 (1945); Reeves, *Policy of the United States Treasury as Applied to Blocked Funds in Litigation*, 113 N. Y. L. J. 2180, 2200 (1945).

** The account of the Yokohama office was blocked in the same fashion as it would have been if it had been maintained with a domestic bank.

Moreover, the effect of the decision is to confer upon the plaintiff an interest in the blocked property of the Agency itself. When the Superintendent, as statutory receiver, takes possession of the business and property of a banking organization for the purpose of liquidation, the assets of which he takes possession become a trust fund for the benefit of those creditors of the organization who are entitled to share in them. *Lafayette Trust Co. v. Beggs*, 213 N. Y. 280, 290; *People v. American Loan & Trust Co.*, 172 N. Y. 371, 377, 378; *People v. Metropolitan Surety Co.*, 205 N. Y. 135, 139. Prior to the close all of the creditors of the organization have rights *in personam* against the banking organization. Subsequent to the close certain creditors of the organization acquire additional rights which constitute rights *in rem* against the assets in the hands of the liquidator. As was stated in *Ticonic National Bank v. Sprague*, 303 U. S. 406, 412:

> "The liability *in personam* of the bank gives rise to a claim *in rem* against the free assets in the hands of the receiver; * * *."

This is particularly true in the case of the liquidation of an agency of a foreign bank, where, under Section 606 of the New York Banking Law, only "preferred" creditors of the corporation are entitled to share in the liquidation fund. (See *supra*, p. 9.) The rights of preferred creditors thus created are separate and distinct from their rights against the banking organization as a whole. *Carr v. Yokohama Specie Bank*, 272 App. Div. 64, aff'd 297 N. Y. 674; *Suomen Paukki v. Bell*, 80 N. Y. S. 2d 824.

At the time of the transaction here involved, and when the Superintendent took possession, all of the property of the Agency (not merely the accounts on its books of other blocked nationals) was blocked, for the Agency itself was

a blocked national. The creation of *any* interest in such property was prohibited by the Order.*

---

* General Ruling No. 12 (App., p. 60) specifically provides that the *creation of any* rights in any kind of blocked property is a prohibited *transfer*. Thus, "transfer" is defined in Section 5 (a) of the Ruling to include:

> "any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to *create*, surrender, release, transfer, or alter, directly or indirectly, *any* right, *remedy*, power, privilege, or interest with respect to *any property* • • •." (Emphasis supplied.)

Section 5 (b) of the Ruling broadly defines "property" to include among other things, all types of currency, credit, securities, negotiable instruments, as well as "book credits, debts, claims, contracts," and other intangibles such as options and futures in commodities, and evidences of any of the items specified.

All of the foregoing transfers are specifically prohibited until licensed. Paragraph 1 of the Ruling provides:

> "any transfer • • • is null and void to the extent that it is (or was) a transfer of any property in a blocked account at the time of such transfer"

and that—

> "no transfer after the effective date of the Order shall be the basis for the assertion or recognition of any *right, remedy*, power, or privilege with respect to, or interest in, any property while in a blocked account • • •." (Emphasis supplied.)

Press Release No. 34 (App., p. 64) issued in conjunction with General Ruling No. 12 emphasizes that even prior to the Ruling and ever since the issuance of the Order unlicensed transfers were void and unenforcible and that the Ruling merely serves to confirm that fact. It reads, in part—

> "The Treasury Department in a formal statement issued today called attention to the fact that all unlicensed transfers of blocked assets in the United States are void and unenforcible.
>
> "General Ruling No. 12, issued by the Secretary of the Treasury, makes clear that unlicensed transfers of blocked assets in violation of the freezing orders, and transfers designed or having the effect of evading such orders, *always have been void and unenforcible*. • • • today's ruling serves the purpose of emphasizing this fact for the benefit of any of the public who may have overlooked this aspect of freezing control."

The result of the decision of the Court of Appeals makes it perfectly obvious that a shift in title to this blocked property occurred. If the transaction of August 29th here involved had not occurred plaintiff would have had no claim against the New York Agency of the Yokohama Specie Bank, Ltd., or against the Superintendent as statutory receiver and trustee of the assets in liquidation. Under the judgment of the Court of Appeals herein, however, plaintiff acquired, as a result of that transaction, a beneficial interest in such assets and a preferred right to participate therein.

Further discussion of the conflict between the *Singer* and *Propper* decisions is, we believe, rendered unnecessary by the fact that this Court in the *Propper* case took specific note of the *Singer* case and explicitly disagreed with it. In refusing to follow the decision of the New York Court of Appeals this Court stated that (pp. 484-5):

> "We assume that the Court of Appeals of New York held in *Singer* v. *Yokohama Specie Bank* that title to blocked assets could pass without license from a statutory receiver to a creditor. As the Trading with the Enemy Act is federal legislation founded on federal constitutional provisions, however, the United States has authority to make all laws necessary and proper for carrying the power into execution. The power to enact carries with it final authority to declare the meaning of the legislation. *Prudence Corp.* v. *Geist*, 316 U. S. 89, 95. * * *. The Trading with the Enemy Act is national in range. The effect of a federal freezing order should be the same on subsequent transfers of title in all states."

Even prior to the decision of this Court in the *Propper* case a number of other federal courts had explicitly refused to follow the *Singer* decision, recognizing that

it unduly limited the scope of freezing controls and partially defeated the accomplishment of the objective of the freezing control program. Thus, in *Bernstein* v. *N. V. Nederlandsche-Amerikaansche*, 173 F. 2d 71, the court said (p. 78):

> "The opinion of the New York Court of Appeals in Singer v. Yokohama Specie Bank, 293 N. Y. 542, 58 N. E. 2d 726, allowed a suit to proceed to judgment without a license with the qualification, however, that the judgment therein could not be enforced without obtaining one. This decision is not controlling upon a court of the United States construing the meaning and effect of federal regulations issued under a federal statute. We accordingly hold that the appointment of the state receiver and his assertion in the United States District Court of his claim to blocked property must be validated by a license of the Treasury Department if he desires to proceed further."

Other decisions specifically disagreeing with the *Singer* case are:

Clark v. *Chase National Bank, etc.*, 82 F. Supp. 740 at 742;

Heyden Chemical Corporation v. *Clark*, 85 F. Supp. 949 at 953;

Clark v. *Propper*, 169 F. 2d 324 at 327.

See also criticism of the *Singer* decision in Berger & Bittker, *Freezing Controls: The Effect of an Unlicensed Transaction*, 47 Col. L. Rev. 398 (1947).

In summary, then, we submit that the transaction of August 29, 1941 cannot serve as a basis for the assertion of a claim to a preference in the liquidation of the New York Agency of the Yokohama Specie Bank, Ltd.; that the New York Court of Appeals erred in holding that a pro-

hibited transaction could give rise to an enforcible legal obligation by the New York Agency to make a payment to plaintiff; and that the court erred in granting judgment effectuating the creation of an interest in blocked assets without a license.

(d) The decision of the Court of Appeals may require the Superintendent to retain in perpetuity out of the blocked assets of the Agency reserves for the payment of claims of plaintiff and other creditors similarly situated.

Since the inception of this litigation, the Superintendent has maintained a reserve out of the blocked assets of the Agency against the possibility that he might eventually be required to make payment of plaintiff's claim (R. 505). The Alien Property Custodian has vested in the United States the surplus of such assets remaining after payment of those creditors of the Agency whose claims are established in accordance with the Banking Law of the State of New York (Ex. DD, R. 485 (333)). So long as plaintiff's claim is considered an "accrued" and "established" one, the reserve maintained with respect thereto must, under state law, be retained by the Superintendent. Consequently, under the decision of the Court of Appeals, it would appear that the Superintendent may be under an obligation to retain reserves in his hands for this and all claims of like nature in perpetuity. The existence of any such obligation would undoubtedly impede the Federal Government in reducing these assets to possession and administering and using them in the national interest as the Trading with the Enemy Act contemplates.

By contrast with the foregoing, under the decision of this Court in the *Propper* case, it is clear that plaintiff has no enforcible claim whatsoever against this liquidation. Since his claim is neither accrued nor established, the

Superintendent would not be required to retain a reserve for its payment. Plaintiff would have no interest in the assets held by the Superintendent and the Superintendent would be free to transfer them to the Custodian under his Vesting Order.

In this connection it must be noted that the question at issue governs the determination of numerous claims other than the one involved in the instant action. The Superintendent at the present time is liquidating the New York Agencies of 11 Japanese and Italian banking corporations. Many claims were presented against these liquidations based upon transactions prohibited by Executive Order No. 8389. The Superintendent has consistently taken the position since the commencement of these liquidations that claims arising out of or based upon unlicensed transactions were not entitled to recognition and accordingly rejected all claims of this nature. At the present time litigation based upon such claims aggregating over $1,500,000 is pending in the courts of New York. If this Court should affirm the decision of the Court of Appeals, the state courts would be required to hold all such claims valid and enforcible, thereby frustrating the declared intent and purpose of the freezing control program to void unlicensed transactions.

We have not here emphasized the extent to which the doctrine of the New York courts frustrates the broader objectives of the freezing control program, for this Court indicated that it was fully aware of such objectives in its decision in the *Propper* case. It may be noted, however, the importance of the *Singer* case to the officials charged with administering that program is testified to by the fact that the Government has participated as *amicus curiae* not only in this Court but also on both appeals to the Court of Appeals including both motions for reargument.

POINT II.

Payment of plaintiff's claim has never been licensed.

In the foregoing Point we have argued that the claim asserted by plaintiff is based upon a prohibited transaction and that as a result no effect can be given by the courts to such transaction in the absence of a license from the appropriate federal officials. Two applications for such licenses were in fact filed by plaintiff on August 29, 1941 (Ex. F, R. 417 (155)) and on December 29, 1941 (Ex. E, R. 412-6 (155)). Both of these applications were denied by the Treasury Department (Exs. H, I, R. 425-6 (156)).*

As a result, the contention now made by plaintiff, that payment of its claim has been licensed, is based, not upon any specific licenses granted to plaintiff or any one else with respect to this particular transaction, but upon certain general documents issued by the Secretary of the Treasury and the Alien Property Custodian during the years 1942 and 1943.

In particular, plaintiff claimed in the courts below that payment of his claim had been authorized either by a license issued by the Secretary of the Treasury to the Superintendent on January 14, 1942 (Ex. 15, R. 375 (228)) or by a letter from the Secretary of the Treasury to the New York Agency dated October 29, 1942 (Ex. 17, R. 380 (229)). The New York Supreme Court and the Ap-

* On March 16, 1950, subsequent to the granting of the petitions for writs of certiorari, the Attorney General, Office of Alien Property, to whom have been transferred the powers of the Secretary of the Treasury under Executive Order No. 8389 (see footnote, p. 42), denied a third application for a license filed by plaintiff. Since the application was made without prejudice to the present litigation, the Superintendent will base no argument upon this event.

pellate Division both held that payment had been licensed by the letter of October 29, 1942, and accordingly they awarded interest to plaintiff from that date and refused to condition the payment of his claim upon procurement of an appropriate federal license. The Court of Appeals, however, reversed on this point, and held that neither this document nor any of the other documents in the record authorized the payment of plaintiff's claim. Accordingly that court eliminated the provision for interest and provided that payment was to be made only after federal clearance had been procured.

The decision of the Court of Appeals upon the question of whether a license had been issued is in accord with the position taken by the Secretary of the Treasury and the Office of Alien Property, the officials of the Federal Government charged with the duty of licensing transactions prohibited by the Executive Order. Both of these officials have filed briefs in this litigation and have consistently maintained, both in the state courts and in this Court, that payment of plaintiff's claim has never been licensed. Since the documents upon which plaintiff relies were issued by these officers, plaintiff is in the position of maintaining that they unwittingly licensed the payment of a claim which they had no intention of licensing, and as to which two specific license applications had been denied.

In considering the questions here presented, it is to be noted that plaintiff's arguments are all predicated upon the assumption that an enforcible legal obligation arose out of the transaction of August 29, 1941, conferring upon him an accrued and established right to be paid out of the assets of the Agency in liquidation. As we have seen, the Court of Appeals so held. Even though making this assumption, however, the Court of Appeals held that the documents upon which plaintiff relies did not authorize

payment of his claim. With this holding, we, of course, agree.*

But we go further. If we are correct in our view that plaintiff has no claim entitled to recognition in the liquidation of the Agency (Point I), then it will follow that the arguments advanced by plaintiff with respect to the licensing of his claim have even less force in this Court than in the Court of Appeals. This results from the fact that the documents upon which plaintiff relies at most authorize the Superintendent in general terms to pay certain creditors of the Agency and none of them can be interpreted as licensing the creation or accrual of a claim. The documents merely license the payment of claims otherwise valid and enforcible and since plaintiff's claim was not of this nature, they do not license its payment. In other words, it is our view that, in the absence of a license authorizing the transaction, plaintiff never became a creditor of the Agency, and it is therefore immaterial whether the Superintendent was authorized to pay such creditors, or whether such authorization to pay emanated from the Secretary of the Treasury or from the Alien Property Custodian.

These matters will perhaps become clearer as the discussion of the documents proceeds.

---

* The decision of the Court of Appeals, that plaintiff's claim was an accrued and established one but that the transaction upon which it was based had never been licensed, rendered it unnecessary for that court to determine whether under New York law a claim entitled to share in the liquidation of the Agency could be created by a license issued subsequent to the commencement of the liquidation. In New York the status of all claims against a banking organization in liquidation is fixed as of the date when the Superintendent takes possession, and claims which were not then in existence are not ordinarily entitled to share in the liquidation. *People* v. *Commercial Alliance L. Ins. Co.*, 154 N. Y. 95, 98; *Lafayette Trust Co.* v. *Beggs*, 213 N. Y. 280, 290; *People* v. *American Loan & Trust Co.*, 172 N. Y. 371, 378; *Matter of Peoples Surety Co.*, 186 App. Div. 663, 667, aff'd 226 N. Y. 697; *People* v. *Merchants' Trust Co.*, 116 App. Div. 41, aff'd 187 N. Y. 293; *People* v. *Bank of Staten Island*, 70 Misc. 633.

(a) The Secretary of the Treasury never authorized payment of plaintiff's claim.

The first license granted to the Superintendent by the Secretary of the Treasury was issued on December 19, 1941. It did no more than to permit the Superintendent to pay administration expenses (Ex. AA, R. 479 (333)). On January 14, 1942, the first comprehensive liquidation license was issued (Ex. 15, R. 375 (228)). This license provided, in part, as follows (R. 377):

> "You are hereby authorized to make payments to depositors, effect the sale of securities and delivery of collateral, make payments of salaries and other expenses and to perform all other acts appropriate to the orderly liquidation of the assets, property and business in the State of New York of the following Foreign Banking Corporations in accordance with the laws of the State of New York: * * *
>
> Yokohama Specie Bank, Limited
>
> * * * *
>
> "This license is issued subject to the following stipulations:
>
> "1. All payments to countries designated in the Order or nationals thereof, shall be made to domestic banks for credit to the blocked accounts of such nationals.
>
> "2. Transactions involving a blocked national other than the bank in liquidation shall be effected only as authorized by a general or specific license."

This license did not authorize payment of plaintiff's claim. Such payment was specifically prohibited by the second stipulation of the license which provided that "transactions involving a blocked national other than the bank in liquidation shall be effected only as authorized by a general or specific license". The payment to Staml-

and would clearly "effect" a transaction "involving a blocked national other than the bank in liquidation".*

Even apart from the stipulation, however, it is clear that the license authorized no more than the payment of claims otherwise entitled to share in the liquidation of the Agency. Nothing in the license purports in any way to authorize the creation of a new claim or to validate a transaction which took place long prior to the commencement of the liquidation. If we are correct in our contention that transactions prohibited by the Order do not give rise to enforcible legal obligations until licensed, it follows *a fortiori* that the license of January 14th did not authorize payment of the claim in suit.

In this connection paragraph 18 of General Ruling No. 4 (App., p. 60) provides that:

> "No license or other authorization issued by or under the direction of the Secretary of the Treasury pursuant to the Order or sections 3 (a) or 5 (b) of the Trading with the enemy Act, as amended, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides."

Clearly the license of January 14, 1942, did not "specifically" provide for the licensing of the transaction of August 29, 1941.

---

* The Yokohama office of the bank was clearly a "blocked national other than the bank in liquidation" within the meaning of this license. Section 5F of Executive Order No. 8389, under which this license was granted, very specifically provides that each branch of a banking institution should be regarded as a "separate banking institution". Section 1A of the Order has a similar provision. Moreover, it was in fact only the Agency, and not the Yokohama Specie Bank as a whole, which was in liquidation by the Superintendent. And the Treasury was fully aware of this fact when it issued the license, for its representative, who had been in charge of the Agency before the Superintendent took possession, so stated in his closing report. (Ex. 1, R. 458-9 (294).) Finally, the Treasury letter of October 20, 1942, referring to the license of January 14th, speaks in terms of the New York Agency. (Ex. 17, R. 380 (229).)

As stated, all of the New York courts passing upon this question agreed with the view that this license did not authorize payment of plaintiff's claim. The Supreme Court and the Appellate Division, however, held that payment was licensed by a letter issued by the Secretary of the Treasury on October 29, 1942. This letter was written after the Alien Property Custodian, pursuant to authority vested in him by Executive Order No. 9193 (App., p. 52), had issued a Supervisory Order (Ex. CC, R. 482 (333)) by which he undertook the supervision of the assets in the possession of the Superintendent. The letter, which revoked the license of January 14, 1942, read as follows (Ex. 17, R. 380 (229)):

> "Reference is made to Supervisory Order No. 27 executed on September 23, 1942, by the Alien Property Custodian.
>
> "In view of such order, you are authorized by the Treasury Department, so far as Executive Order No. 8389, as amended, is concerned, to engage in any transaction on or after October 29, 1942, which might be engaged in without a specific license of the Treasury Department by a person who is not a national of any blocked country.
>
> "License No. NY 338836-SU is hereby revoked insofar as it applied to Yokohama Specie Bank, Ltd., New York Agency.
>
> "It is suggested that you communicate with the office of the Alien Property Custodian concerning the applicability to your enterprise of any orders, rulings or regulations of such office."

So far as the transaction here involved is concerned, this letter did not grant any greater authority than did the license of January 14, 1942; at most it placed the Agency in the same position as an unblocked national, such as a domestic bank. It authorized any transactions which might be carried out by such a domestic bank without a specific license, but it did no more than this.

The transaction involved in the instant case was not one which could be carried out by a domestic bank without a specific license. If the cable instructions of August 29th had been given by a Japanese bank to a *domestic* bank, a license would still have been required, for the payment by that bank would have been "by, or on behalf of, or pursuant to the direction of" a blocked national (the Japanese bank) and would have involved property in which the same blocked national had "an interest" subsequent to the effective date of the Order. It would therefore have constituted a prohibited transfer of credit and a prohibited transaction in foreign exchange and a prohibited payment to and by a banking institution within the United States.

Even apart from this, however, we think it manifest that the Secretary of the Treasury did not intend by this letter to "validate, willy-nilly and in gross, all * * * transfers, irrespective of how illegal may have been their source, regardless of how illicit may have been their purpose" (R. 538). At the very most the letter permitted payments to be made out of the property of the Agency in connection with transactions otherwise valid, without regard to the fact that the property of the Agency itself had theretofore been frozen. Nothing contained therein indicates that it was intended to create new claims or to validate past transactions upon which such claims were based. The terms of the letter itself and the provisions of General Ruling No. 4 (18) discussed above, both indicate that the letter was intended to be prospective in its operation. The Court of Appeals correctly held that this letter did not constitute federal clearance of plaintiff's claim.

(b) The Alien Property Custodian never authorized payment of plaintiff's claim.

There are three documents issued by the Custodian which plaintiff has cited in support of his assertion that

payment of his claim can be made without further action by the federal government.

The first of these documents was the Supervisory Order above referred to, issued by the Alien Property Custodian on September 18, 1942 (Ex. CC, R. 482 (333)). By this document the Custodian undertook (R. 483)

> "* * * the supervision to the extent deemed necessary or advisable from time to time by the undersigned of each New York branch of said business enterprise and of all property of any nature whatsoever owned or controlled by, payable or deliverable to, or held on behalf of or on account of or owing to, said branch * * *."

The Custodian did not by this Order purport to affect in any way the rights of creditors to share in the liquidation of the New York Agency. Nothing contained therein purports to validate transactions of any nature whatsoever or to license the payment of any claims as to which licenses were theretofore required.

The second document issued by the Custodian upon which plaintiff relies is a letter dated September 28, 1942 (Ex. 16, R. 378 (228)) by which the Custodian informed the Superintendent that he had issued the Supervisory Order discussed above, and directed him to continue the liquidation and to pay the creditors who were found to be entitled to payment under the Banking Law.* Nothing

---

* The letter reads, in part, as follows:

"For the present, it is contemplated that you shall continue to retain possession of and liquidate such business enterprise, its property and assets, and in the course thereof you may do such acts and perform such duties as may be required of or permitted to you by and in accordance with and subject to the provisions of the Banking Law of the State of New York. You shall, however, within a reasonable time prior to the acceptance by you of any claim or claims, deliver to the undersigned or to his duly authorized agent, a written notice of the proposed acceptance together with a statement setting

[Footnote continued on following page.]

in the letter, however, lends any color to the contention that it was intended to validate past transactions such as the one upon which plaintiff's claim is based. Nor is there anything contained therein to indicate that the Custodian intended by it to enlarge the category of claims entitled to share in the liquidation prior to the issuance of this document.

The final document which plaintiff has cited in support of his contention that his claim is and has been for a number of years free of federal control is the Vesting Order issued by the Custodian on February 15, 1943 (Ex. DD, R. 485 (333)). This document served the function of vesting the surplus remaining after the payment of persons holding claims entitled to be paid in the liquidation of the Agency. It does not deal in any way with the licensing of claims based upon prohibited transactions, and certainly does not purport to validate the claim asserted in this action.

[Footnote continued from preceding page]

forth the nature and amount of the claim or claims intended to be accepted and the names, addresses and, so far as known, the nationalities of the holders or owners thereof. The undersigned will then examine the same and take whatever action he may deem necessary or advisable. In connection therewith you are requested to accord to the undersigned or his duly authorized representative access to and the right to inspect at any time your books and records dealing with the aforesaid company or its New York branch. You are also requested to notify the undersigned when you have liquidated assets sufficient to produce funds necessary to pay, and there have been paid, all the accepted or established claims of creditors whose claims arose out of transactions had by them with the New York branch of such business enterprise, or whose names appear as creditors on the books of such branch, together with interest thereon and the expenses of liquidation, so that the undersigned may take such action at that time with respect to the assets remaining in your hands as he may deem necessary in the interest of the United States.

(c) There is no occasion for this Court to pass upon the respective roles of the Secretary of the Treasury and the Alien Property Custodian.

Plaintiff devoted a very large portion of his brief on the petition for a writ of certiorari to a discussion of the powers of the Secretary of the Treasury vis-a-vis the Alien Property Custodian, with respect to property over which the Custodian has asserted jurisdiction. The fact that the powers of both of these officials are now, and have been for the past year and a half, vested in a single official, the Attorney General of the United States, renders this issue of comparatively little general interest.*

Plaintiff argues that upon assumption by the Custodian of supervisory jurisdiction over the Agency the Treasury Department was required to release all control under Executive Order 8389 to the Custodian and that a license from the Secretary of the Treasury is no longer necessary. This argument is based upon the last paragraph of Section 2 of Executive Order 9193 (App., p. 55), reading as follows:

> "When the Alien Property Custodian determines to exercise any power and authority conferred upon him by this section with respect to any of the foregoing property over which the Secretary of the Treasury is exercising any control and so notifies the Secretary of the Treasury in writing, the Secretary of the Treasury shall release all control of such property,

* The transfer of the powers of the Alien Property Custodian to the Attorney General was made effective on October 15, 1946 by Executive Order No. 9788 (11 F. R. 11981). The transfer to the Attorney General of the powers of the Secretary of the Treasury with respect to the administration of Executive Order No. 8389 was made on August 20, 1948 (effective September 30, 1948) by Executive Order No. 9989 (13 F. R. 4891).

except as authorized or directed by the Alien Property Custodian."

There are several answers to plaintiff's argument:

Firstly, in our view it is wholly immaterial whether the power to license the transaction in suit resided in the Secretary of the Treasury or the Alien Property Custodian, for it is clear that the mere assumption of control by the Alien Property Custodian over the property of the Agency did not annul the prohibitions of Executive Order No. 8389 or validate transactions theretofore prohibited by that Order. One or the other of these federal officers still had to license the transaction and since, as has been seen, neither has done so, it is wholly immaterial for the purpose of this case which of them had that power. "Only by doing violence to both the language of the order and the spirit of the Federal controls system and its regulations, could we conclude that the surrender of Treasury supervision to the Custodian was intended to defrost, at one stroke, all of the frozen accounts of enemy nationals" (R. 537).*

Secondly, it seems clear, wholly apart from the foregoing, that the nature and extent of any release of control by the Secretary of the Treasury *in this case* is to be determined by the terms of the document supposedly effecting it. The letter of October 29, 1942, the document

* Not only did the prohibitions of Executive Order No. 8389 survive the assumption of supervisory jurisdiction by the Custodian, but in addition when the Custodian assumed such supervisory powers he imposed further controls prohibiting "All transactions, involving any • • • (supervised) property, or by, or with, or on behalf of, or pursuant to the direction of, any business enterprise" of which he undertook supervision, except as specifically authorized by him or his representatives (Cert. of Appointment of S. James Crowley, Oct. 30, 1942, 7 F. R. 8910, App., p. 73). To the same effect, see 8 F. R. 6694, 8 F. R. 12859, 9 F. R. 1485 and General Order No. 31, 9 F. R. 7739, App., p. 74.

in question, did not purport to release all control. It did not provide that the Superintendent was thenceforth freed from the necessity of complying with the provisions of Executive Order No. 8389, nor that he was authorized, insofar as that Order was concerned, to engage in any transaction whatsoever. On the contrary, the letter explicitly limited the release of control by providing that (R. 380)

> "In view of (the Supervisory) order, you are authorized by the Treasury Department, so far as Executive Order No. 8389, as amended, is concerned, to engage in any transaction on or after October 29, 1942, *which might be engaged in without a specific license of the Treasury Department by a person who is not a national of any blocked country.*" (Emphasis supplied.)

Thirdly, it must be observed that Section 12 of Executive Order No. 9193 (App., p. 59) deprives the plaintiff of the power to challenge the retention by the Secretary of the Treasury of any powers which plaintiff conceives should have been transferred to the Custodian. This section provides as follows:

> "12. Any orders, regulations, rulings, instructions, licenses or other actions issued or taken by any person, agency or instrumentality referred to in this Executive Order, shall be final and conclusive as to the power of such person, agency or instrumentality to exercise any of the power or authority conferred upon me by sections 3 (a) and 5 (b) of the Trading with the enemy Act, as amended; and to the extent necessary and appropriate to enable them to perform their duties and functions hereunder, the Secretary of the Treasury and the Alien Property Custodian shall be deemed to be authorized to exercise severally

any and all authority, rights, privileges and powers conferred on the President by sections 3 (a) and 5 (b) of the Trading with the enemy Act of October 6, 1917, as amended, and by sections 301 and 302 of title III of the First War Powers Act, 1941, approved December 18, 1941. No persons affected by any order, regulation, ruling, instruction, license or other action issued or taken by either the Secretary of the Treasury or the Alien Property Custodian shall be entitled to challenge the validity thereof or otherwise excuse his actions, or failure to act, on the ground that pursuant to the provisions of this Executive Order, such order, regulation, ruling, instruction, license or other action was within the jurisdiction of the Alien Property Custodian rather than the Secretary of the Treasury or vice versa."

The argument with respect to licensing may be summarized as follows:

When the Superintendent took possession of the Agency on December 8, 1941, the plaintiff had no claim entitled to be recognized in the liquidation because the transaction upon which his claim was based fell within the prohibitions of the Executive Order, and no license had ever been obtained validating this transaction. Thereafter the Secretary of the Treasury and the Custodian issued certain documents authorizing the Superintendent in general terms to carry on the liquidation of the Agency and to utilize its funds for the payment of claims entitled to share therein. None of these documents purported, or was intended, to license the creation of new claims or validate transactions taking place before the liquidation commenced. And none of them was intended to license a transaction which could not be entered into by a person who was not a national of a blocked country. Hence it follows that the transaction underlying plaintiff's claim

has never been licensed and his claim has never been validated.

POINT III.

For the foregoing reasons the judgment of the Court of Appeals should be reversed on the issue presented in No. 512 and affirmed on the issues presented in No. 527.

Respectfully submitted,

EDWARD FELDMAN,
Attorney for the Superintendent of Banks,
80 Spring Street,
New York 12, N. Y.

Of Counsel:
DANIEL GERSEN,
HENRY L. BAYLES.

APPENDIX.

1. Joint Resolution of May 7, 1940, 54 Stat. 179:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. 411), as amended, is hereby amended to read as follows:

"During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, and any transfer, withdrawal or exportation of, or dealing in, any evidences of indebtedness or evidences of ownership of property in which any foreign state or a national or political subdivision thereof, as defined by the President, has any interest, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person to furnish under oath, complete information relative to any transaction referred to in this subdivision or to any property in which any such foreign state, national or political subdivision has any interest, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed."

SEC. 2. Executive Order Numbered 8389 of April 10, 1940, and the regulations and general rulings issued

thereunder by the Secretary of the Treasury are hereby approved and confirmed.

. . . . . .

2. Trading With the Enemy Act, c. 106, 40 Stat. 411, as amended, 50 U. S. C. 1 *et seq.*:

. . . . . .

SEC. 5, as amended by the First War Powers Act of 1941, c. 593, Sec. 301, 55 Stat. 839, 50 U. S. C. App. 616:

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as

may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes * * * and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

* * * * *

3. First War Powers Act, 1941; Title III, c. 593, 55 Stat. 838, 840:

SEC. 302. All acts, actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by, or pursuant to the direction of, the President or the Secretary of the Treasury under the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, which would have been authorized if the provisions of this Act and the amendments made by it had been in effect, are hereby approved, ratified, and confirmed.

* * * * *

4. Executive Order No. 8389, April 10, 1940, 5 F. R. 1400, as amended by Executive Order No. 8832, July 26, 1941; 6 F. R. 3715:

By virtue of and pursuant to the authority vested in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency, and finding that this Order is in the public interest and is

necessary in the interest of national defense and security, I, FRANKLIN D. ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA, do prescribe the following:

SEC. 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evi-

dences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

. . . . . .

SEC. 3. The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

. . . . . .

(k) June 14, 1941—

. . . . . .

Japan

. . . . . .

SEC. 5.

. . . . . .

E. The term "national" shall include,

. . . . . .

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and or one or more nationals thereof as herein defined,

. . . . . .

F. The term "banking institution" as used in this Order shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or broker; and each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution."

. . . . .

SEC. 7. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.

. . . . .

5. Executive Order No. 9193, July 6, 1942, 7 F. R. 5205, as amended by Executive Order No. 9567, June 8, 1945, 10 F. R. 6917:

By virtue of the authority vested in me by the Constitution, by the First War Powers Act, 1941, by the Trading with the enemy Act of October 6, 1917, as amended, and as President of the United States, it is hereby ordered as follows:

Executive Order No. 9095 of March 11, 1942, is amended to read as follows:

1. There is hereby established in the Office for Emergency Management of the Executive Office of the President the Office of Alien Property Custodian, at the head of which shall be an Alien Property Custodian appointed by the President. The Alien Property Custodian shall receive compensation at such rate as the President shall approve and in addition shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of his duties. Within the limitation of such funds as may be made available for that purpose, the Alien Property Custodian may appoint assistants and other personnel and delegate to them such functions as he may deem necessary to carry out the provisions of this Executive Order.

2. The Alien Property Custodian is authorized and empowered to take such action as he deems necessary in the national interest, including, but not limited to, the power to direct, manage, supervise, control or vest, with respect to:

(a) Any business enterprise within the United States which is a national of a designated enemy country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by an enemy country or national thereof;

(b) Any other business enterprise within the United

States which is a national of a foreign country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by a foreign country or national thereof, when it is determined by the Custodian and he has certified to the Secretary of the Treasury that it is necessary in the national interest, with respect to such business enterprise, either (i) to provide for the protection of the property, (ii) to change personnel or supervise the employment policies, (iii) to liquidate, reorganize, or sell, (iv) to direct the management in respect to operations, or (v) to vest;

(c) Any other property or interest within the United States of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, a designated enemy country or national thereof:

Provided, however, That with respect to any such country or national other than Germany or Japan or any national thereof, such property or interest shall not include cash, bullion, moneys, currencies, deposits, credits, credit instruments, foreign exchange, and securities except to the extent that the Alien Property Custodian determines that such cash, bullion, moneys, currencies, deposits, credits, credit instruments, foreign exchange, and securities are necessary for the maintenance or safeguarding of other property belonging to the same designated enemy country or the

same national thereof and subject to vesting pursuant to section 2 hereof;

(d) Any patent, patent application, design patent, design patent application, copyright, copyright application, trade-mark or trade-mark application or right related thereto in which any foreign country or national thereof has any interest and any property of any nature whatsoever (including, without limitation, royalties and license fees) payable or held with respect thereto, and any interest of any nature whatsoever held therein by any foreign country or national thereof;

(e) Any ship or vessel or interest therein, in which any foreign country or national thereof has an interest; and

(f) Any property of any nature whatsoever which is in the process of administration by any person acting under judicial supervision or which is in partition, libel, condemnation or other similar proceedings and which is payable or deliverable to, or claimed by, a designated enemy country or national thereof.

When the Alien Property Custodian determines to exercise any power and authority conferred upon him by this section with respect to any of the foregoing property over which the Secretary of the Treasury is exercising any control and so notifies the Secretary of the Treasury in writing, the Secretary of the Treasury shall release all control of such property, except as authorized or directed by the Alien Property Custodian.

3. Subject to the provisions of this Executive Order, all powers and authority conferred upon me

by sections 3(a) and 5(b) of the Trading with the enemy Act, as amended, are hereby delegated to the Secretary of the Treasury or any person, agency, or instrumentality designated by him: *Provided, however,* That when any property or interest, not belonging to a foreign government or central bank, shall be vested by the Secretary of the Treasury, such property or interest shall be vested in, and dealt with by, the Alien Property Custodian upon the terms directed by the Secretary of the Treasury. Except as otherwise provided herein, this Executive Order shall not be deemed to modify or amend Executive Order No. 8389, as amended, or the President's Proclamation of July 17, 1941, or Executive Order No. 8839, as amended, or the regulations, rulings, licenses and other action taken thereunder, or in connection therewith.

4. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Alien Property Custodian under any other provision of this Executive Order, the Secretary of the Treasury and the Alien Property Custodian are authorized and empowered, either jointly or severally to prescribe from time to time, regulations, rulings, and instructions to carry out the purposes of this Executive Order. The Secretary of the Treasury and the Alien Property Custodian each shall make available to the other all information in his files to enable the other to discharge his functions, and shall keep each other currently informed as to investigations being conducted with respect to enemy ownership or control of business enterprises within the United States.

6. To enable the Alien Property Custodian to carry out his functions under this Executive Order, there are hereby delegated to the Alien Property Custodian or any person, agency or instrumentality designated by him all powers and authority conferred upon me by section 5(b) of the Trading with the enemy Act, as amended, including, but not limited to, the power to make such investigations and require such reports as he deems necessary or appropriate to determine whether any enterprise or property should be subject to his jurisdiction and control under this Executive Order. The powers and authority conferred upon the Alien Property Custodian by Executive Order No. 9142 shall be administered by him in conformity with the provisions of this Executive Order.

* * * * *

9. This Executive Order shall not be deemed to modify or amend Executive Order No. 8843 of August 9, 1941, and the regulations, rulings, licenses and other action taken thereunder. Any and all action heretofore taken by the Secretary of the Treasury or the Alien Property Custodian, or by any person, agency, or instrumentality designated by either of them, pursuant to sections 3(a) and 5(b) of the Trading with the enemy Act, as amended, or pursuant to prior Executive Orders, and any and all action heretofore taken by the Board of Governors of the Federal Reserve System pursuant to Executive Order No. 8843 of August 9, 1941, are hereby confirmed and ratified.

10. For the purpose of this Executive Order:

(a) The term "designated enemy country" shall mean any foreign country against which the United States has declared the existence of a state of war.

(Germany, Italy, Japan, Bulgaria, Hungary, and Rumania) and any other country with which the United States is at war in the future. The term "national" shall have the meaning prescribed in section 5 of Executive Order No. 8389, as amended: *Provided, however,* That persons not within designated enemy countries (even though they may be within enemy-occupied countries or areas) shall not be deemed to be nationals of a designated enemy country unless the Alien Property Custodian determines: (i) that such person is controlled by or acting for or on behalf of (including cloaks for) a designated enemy country or a person within such country; or (ii) that such person is a citizen or subject of a designated enemy country and within an enemy-occupied country or area; or (iii) that the national interest of the United States requires that such person be treated as a national of a designated enemy country. For the purpose of this Executive Order any determination by the Alien Property Custodian that any property or interest of any foreign country or national thereof is the property or interest of a designated enemy country or national thereof shall be final and conclusive as to the power or authority conferred upon me by section 5(b) of the Trading with the enemy Act, as amended.

(b) The term "business enterprise within the United States" shall mean any individual proprietorship, partnership, corporation or other organization primarily engaged in the conduct of a business within the United States, and any other individual proprietorship, partnership, corporation or other organization to the extent that it has an established office within the United States engaged in the conduct of business within the United States.

11. The Secretary of the Treasury or the Alien Property Custodian, as the case may be, shall, except as otherwise agreed to by the Secretary of State, consult with the Secretary of State before vesting any property or interest pursuant to this Executive Order, and the Secretary of the Treasury shall consult with the Secretary of State before issuing any Order adding any additional foreign countries to section 3 of Executive Order No. 8389, as amended.

12. Any orders, regulations, rulings, instruction, licenses or other actions issued or taken by any person, agency or instrumentality referred to in this Executive Order, shall be final and conclusive as to the power of such person, agency of instrumentality to exercise any of the power or authority conferred upon me by sections 3(a) and 5(b) of the Trading with the enemy Act, as amended; and to the extent necessary and appropriate to enable them to perform their duties and functions hereunder, the Secretary of the Treasury and the Alien Property Custodian shall be deemed to be authorized to exercise severally any and all authority, rights, privileges and powers conferred on the President by sections 3(a) and 5(b) of the Trading with the enemy Act of October 6, 1917, as amended, and by sections 301 and 302 of title III of the First War Powers Act, 1941, approved December 18, 1941. No persons affected by any order, regulation, ruling, instruction, license or other action issued or taken by either the Secretary of the Treasury or the Alien Property Custodian shall be entitled to challenge the validity thereof or otherwise excuse his actions, or failure to act, on the ground that pursuant to the provisions of this Executive Order, such order, regulation,

ruling, instruction, license or other action was within the jurisdiction of the Alien Property Custodian rather than the Secretary of the Treasury or vice versa.

13. Any regulations, rulings, instructions, licenses, determinations or other action issued, made or taken by any agency or person referred to in this Executive Order, purporting to be under the provisions of this Executive Order or any other proclamation, order or regulation issued under sections 3(a) or 5(b) of the Trading with the enemy Act, as amended, shall be conclusively presumed to have been issued, made or taken after appropriate consultation as herein required and after appropriate certification in any case in which a certification is required pursuant to the provisions of this Executive Order.

6. General Ruling No. 4, subdivision (18), September 3, 1943, 8 F. R. 12285:

"(18) No license or other authorization issued by or under the direction of the Secretary of the Treasury pursuant to the Order or sections 3(a) or 5(b) of the Trading with the enemy Act, as amended, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides."

7. General Ruling No. 12, April 21, 1942, 7 F. R. 2991:

(1) Unless licensed or otherwise authorized by the Secretary of the Treasury, (a) any transfer after the effective date of (Executive Order No. 8389) is null and void to the extent that it is (or was) a transfer of any property in a blocked account at the time of such transfer; and (b) no transfer after the effective date of the Order shall be the basis for the assertion or recognition of any right, remedy, power, or privi-

lege with respect to, or interest in, any property while in a blocked account (irrespective of whether such property was in a blocked account at the time of such transfer).

(2) Unless licensed or otherwise authorized by the Secretary of the Treasury, no transfer before the effective date of the Order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account unless the person with whom such blocked account is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to the effective date of the Order.

(3) Unless otherwise provided, an appropriate license or other authorization issued by the Secretary of the Treasury before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of section 5 (b) of the Trading with the enemy Act, as amended, and Order, regulations, instructions and rulings issued thereunder.

(4) Any transfer affected by the Order and/or this general ruling and involved in, or arising out of, any action or proceeding in any Court within the United States shall, so far as affected by the Order and/or this general ruling, be valid and enforceable for the purpose of determining for the parties to the action or proceeding the rights and liabilities therein litigated: *Provided, however*, That no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such

property could create or confer by voluntary act prior to the issuance of an appropriate license.

(5) For the purposes of this general ruling:

(a) The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or other fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power: *Provided, however,* That the term "transfer" shall not be deemed to include transfers by operation of law.

(b) The term "property" includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in sec. 2 (1) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts, claims, contracts, negotiable documents of title, mort-

gages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term "property" shall not, except to the extent indicated, be deemed to include chattels or real property.

(c) The term "blocked account" shall refer to a blocked account (including safe deposit box) of a party to the transfer and shall have the meaning prescribed in General Ruling No. 4 except that it shall not be deemed to include an account not treated as a blocked account by the person with whom such account is held or maintained.

(d) The term "effective date of the Order" shall have the meaning prescribed in General Ruling No. 4 except that "the effective date of the Order" as applied to any person whose name appears on The Proclaimed List of Certain Blocked Nationals shall be the date upon which the name of such person first appeared on such list.

(e) The term "transfer by operation of law" shall be deemed only to mean any transfer of any dower, curtesy, community property, or other interest of any nature whatsoever, provided that such transfer arises solely as a consequence of the existence or change of marital status; any transfer to any person by intestate succession; any transfer to any person as administrator, executor, or other fiduciary by reason of any testamentary disposition; any transfer to any person as administrator, executor, or fiduciary by reason of judicial appointment or approval in connection with any testamentary disposition or intestate succession; and any transfer pursuant to (i) Netherlands Royal Decree of May 24, 1940, and (ii) Norwegian Provisional Decree of April 22, 1940, concerning the monetary system, etc.

(6) Nothing contained in this general ruling shall be deemed to affect in any way criminal liability for violation of the Order, or the regulations, rulings, circulars, or instructions issued thereunder, or in connection therewith, or to otherwise modify any provision thereof.

By direction of the President.

8. Press Release No. 34, April 21, 1942.

The Treasury Department in a formal statement issued today called attention to the fact that all unlicensed transfers of blocked assets in the United States are void and unenforceable.

General Ruling No. 12, issued by the Secretary of the Treasury, makes clear that unlicensed transfers of blocked assets in violation of the freezing orders, and transfers designed or having the effect of evading such orders, always have been void and unenforceable.

Secretary Morgenthau, commenting on today's general ruling, pointed out that these unlicensed transfers of blocked assets always have been void and unenforceable under the freezing orders and that today's ruling serves the purpose of emphasizing this fact for the benefit of any of the public who may have overlooked this aspect of freezing control.

He also called attention to the provisions of the ruling, making it possible for persons who have been parties to unlicensed transfers of blocked assets to file applications for licenses to validate these transfers.

"The Treasury, of course, wants to be reasonable about this matter," he stated, "we do not propose to allow our regulations, intended for the protection of our country and the United Nations, to become an instrumentality for defeating their interests or producing unconscionable advantages or unreasonable hardships. These matters can be dealt with by licenses

without undue interference with the purposes of freezing control."

Treasury officials pointed out that there are more than 7 billion dollars in blocked assets in the United States. The Government's policy on this matter, as reflected in today's formal ruling, has nullified attempts by the Axis to gain title to the billions of dollars in assets belonging to nationals of the countries overrun by the Axis. It has defeated efforts of the Axis to wrest control of such assets away from their lawful owners and hold them in the hopes that in the postwar period it will be possible to realize on such assets if freezing restrictions are lifted. Of equal significance is the fact that it has destroyed any possible black market in neutral countries for blocked assets—one of the ways the Axis would like to be able to obtain the foreign credit necessary to finance imports from neutral countries into Axis territory and also one of the ways the Axis would like to be able to gain the funds necessary to subsidize espionage, sabotage and fifth column activities in the United Nations, Latin America and elsewhere.

Treasury officials explained that based on the evidence of what the Axis was doing with assets of the overrun countries within their physical control, Axis efforts in an operation of this character would follow no single pattern. Rather they would run the gamut from outright duress—assignments at the point of a gun, or with the Gestapo as "witnesses"—through to the more subtle "legal" transfers—the purchase of such blocked assets against payment in local currency obtained as occupation costs or by forced loan from banking institutions in the occupied areas. In these latter cases the point of the gun would not be leveled at the individual but would be leveled at the central bank and "Quisling" governments who would provide

the credit for the Axis to "buy" their country's birthright.

The net effect of such transfers would not vary however, they would be intended to mulct the overrun countries of the very life-blood of any postwar reconstruction, namely, the foreign exchange needed to obtain the goods and services necessary for rebuilding the economies of these countries. Axis war psychology would be benefitted also—by depriving the holders of their title to these assets the Axis would encourage a spirit of defeatism and a willingness to succumb to the German "new order".

Officials also explained that based on the operation of the neutral blacket market in looted assets physically in the control of the Axis, it was easy to anticipate the type of black market the enemy might try to foster for "blocked assets". This neutral black market operation would be designed to give the Axis immediate returns on blocked assets even though the Axis could not get such assets out from under our freezing regulations. In this case the assets would be assigned or otherwise transferred to neutral speculators at heavy discount in order that the Axis could obtain credit now to buy goods and services in neutral countries and thus assist the war effort. Of course some of these black market operations would be for the obvious purpose of lining the pockets of Axis officialdom as insurance against the day when the Axis is crushed. Neutral speculators would either hold such assignments with the intent of salvaging on them after the war or in the hope of being able to squeeze the blocked assets through the freezing control by one trick or another.

As was pointed out, since freezing control makes null and void or unenforceable all transfers with respect to blocked assets unless licensed by the Secretary of

the Treasury. Axis attempts to gain title to these assets are frustrated and the true owner's interests are protected and he continues to have a valuable stake in a victory by the United Nations.

Commenting upon today's ruling, Secretary Morgenthau stated: "This Government served notice on the world when we froze the assets of Norway and Denmark on April 10, 1940, that we did not intend to permit the Axis to realize any use or benefit from Norwegian and Danish assets in the United States. Since that time we have consistently pursued this policy with respect to every country falling under the Axis yoke. The policy of this Government always has been unequivocal. We will not allow the Axis, directly or indirectly, to gain any interest in the 7 billion dollars in blocked assets in this country. Neither those funds nor any interest in them will be used against the United Nations by the Axis. Neither will they be used as a part of Germany's economic 'new order' in Europe or Japan's 'co-prosperity sphere' in the Pacific."

It was emphasized that while freezing control attempted to interfere as little as possible with normal legitimate commercial transactions, still the Government was combatting a menace of sweeping proportions and was compelled to block all corrosive efforts of infiltration through loopholes. Freezing control and the Government's policy is therefore comprehensive and the licensing technique must be freely used to prevent hardship in legitimate cases. Thus, under the freezing orders, more than 80 general licenses have been issued, permitting vast categories of transactions under appropriate safeguards without even filing an application. In addition, more than 400,000 specific licenses also have been issued.

Paragraph (1) of today's general ruling deals with

unlicensed transfers made after the effective date of the freezing orders involving property in blocked accounts. If any such transfer was made after the account was actually blocked, then the transfer is null and void unless licensed. Thus, if a bank blocked the account of a national of Denmark on April 10, 1940, and on June 10, 1940, the national attempted to assign title to the account to a German, the transfer would be null and void unless the Treasury licensed it. On the other hand, if a transfer were made before the account was actually blocked, but attempt was made to enforce it while the account was in fact blocked, the transfer would be unenforceable. By way of example: On July 15, 1941, John Doe, resident in Argentina, assigned his account with an American bank to Richard Roe in the United States. On September 15, 1941, the Treasury instructed the bank to block the account of John Doe as a national of Rumania. After September 15, 1941, the assignment would be unenforceable against John Doe's blocked account unless the transfer were licensed by the Treasury Department.

Paragraph (2) of the general ruling deals with transfers alleged to have been made before the effective date of the freezing orders but involving accounts thereafter blocked. These transfers are unenforceable against blocked accounts unless the person with whom the blocked account was held or maintained had written notice of the transfer or had recognized it in writing prior to the effective date of the Order. Thus, if in the example above, the national of Denmark had assigned the bank account to the German in 1937 and the bank was not notified of the assignment until June 10, 1940, the assignment would be unenforceable against the blocked account unless licensed. If, on the other hand, the bank was notified in writing of the assignment before April 10,

1940, then the assignment is enforceable against the blocked account, (but, of course, payment from the blocked account could only be made pursuant to Treasury license).

Treasury officials pointed out that the policy behind paragraph (2) of the general ruling was understandable. If the general ruling had been merely prospective in operation, it would be easy for Axis agents to validate transfers obtained under duress by the subterfuge of dating them prior to the effective date of the Executive Order. This would, of course, defeat one of the major purposes of freezing control. Officials pointed out that in those cases where notice of the transfer was given to the person maintaining the account in this country and where the transfer had been accepted by that person as valid, the provisions of the general ruling are inapplicable since *under those circumstances the notice* is an adequate precaution to guarantee that the transfer was made prior to the effective date of freezing control.

Paragraph (3) of the ruling provides that a license issued by the Treasury Department, either before or after a transfer, completely validates the transfer for the purposes of freezing control. Of course, if an assignment would have been invalid without freezing control (e. g., because not properly executed), a Treasury license does not purport to remedy this type of invalidity.

Paragraph (4) is but a formal statement of the position which the Treasury Department has always taken on litigation (including attachments) affecting blocked assets. The Treasury has no desire to limit the bringing of suits in courts within the United States: *Provided*, That no greater interest is created by virtue of the attachment, judgment, etc., than the owner of the blocked account could have

voluntarily conferred without a license. Thus, the Treasury does not want to interfere with the orderly consideration of cases by the courts provided that the results of court proceedings are subject to the same policy consideration from the point of view of freezing control as those arising through voluntary action of the parties.

Paragraph (5) defines various terms employed in the ruling. For example: the term "transfer" is given a very comprehensive meaning, excepting only certain types of transfers by operation of the law (e. g., transfer by intestate succession). The term "property" is broad but by and large does not include mere chattels or real property. The term "blocked account" is in effect limited to accounts actually treated as blocked accounts by the person with whom such account is held or maintained.

Paragraph (6) is technical in character and reserves the full right of the Government to prosecute for violations of the freezing orders and emphasizes that General Ruling No. 12 is not intended to modify outstanding freezing orders, regulations, etc.

9. Public Circular No. 31, August 2, 1946, 11 F. R. 8351:

(1) Reference is made to General Ruling No. 12 relating to unlicensed transfers of blocked property. Reference is also made to General Ruling No. 19 relating to the release of Treasury controls over property vested by the Alien Property Custodian. This circular deals with the effect of such release on unlicensed attachments levied with respect to blocked property prior to the vesting thereof by the Custodian

(2) Under paragraph (1) of General Ruling No. 12, interests in blocked property cannot be acquired,

transferred, or created by unlicensed "transfers." Nor may an unlicensed transfer be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any blocked property.

(3) An attachment is a "transfer." See paragraph (5) of General Ruling No. 12 where the term "transfer" is defined as including "the issuance, docketing, filing, or other levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment." An unlicensed attachment, therefore, cannot operate to transfer or create any interest in blocked property. Nor can it serve as a basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any blocked property.

(4) Paragraph (4) of General Ruling No. 12 does not constitute a license authorizing the seizure or creation of any interest in blocked property by attachment proceedings or other legal process. This paragraph merely is a formal statement of the position which the Treasury Department has always taken with respect to litigation affecting blocked property—that it does not desire to interfere with such litigation so long as it is clearly understood that the judicial process cannot, without a license or other authorization from the Secretary of the Treasury, operate to transfer or create any interest in blocked property. Thus the proviso of paragraph (4) specifies that "no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by

voluntary act prior to the issuance of an appropriate license." In issuing paragraph (4), the Treasury Department did not undertake to decide for the courts whether they should exercise jurisdiction. It simply prescribed that jurisdiction could be exercised only on the basis that if a Treasury license was not issued, the judicial process could not operate to transfer or create any interest in blocked property, nor could it be the basis for the assertion or recognition of any other right, remedy, power, or privilege with respect to the property.

(5) The Treasury Department has always considered that when the Alien Property Custodian has vested any property, it would not be in the national interest for the Treasury Department thereafter to grant licenses authorizing the creation or acquisition of any interest in the property. Formerly it was the practice of the Department, whenever it was notified by the Custodian that a particular property had been vested, to issue a specific release to the Custodian of all control of the property under Executive Orders Nos. 8389 and 9193. Paragraph (1) of General Ruling No. 19 constitutes a general release of such control in the case of all German and Japanese property vested by the Custodian. Paragraph (2) of the General Ruling is intended to make it clear that a release of control over any vested property to the Alien Property Custodian, whether by specific release or by reason of the General Ruling, operates as a final denial by the Secretary of the Treasury of any pending application for license or other authorization relating to such property and that no application for a license authorizing the creation, acquisition, or transfer of any interest in such property will thereafter be entertained or granted. The paragraph is

thus a formal statement of what has always been the position of the Treasury Department—namely, that once blocked property has been vested by the Custodian, there is no longer any possibility that an unlicensed attachment may ripen through the issuance of a Treasury license into a seizure and acquisition of an interest in such blocked property.

(6) In view of the fact that the Alien Property Custodian has publicly announced his intention of vesting all German and Japanese property in the United States, it will be the general policy of the Treasury Department not to grant any licenses authorizing the creation or acquisition through legal process of any interest in blocked German or Japanese property.

10. Certificate of Appointment of S. James Crowley and Edward C. Tefft, October 30, 1942, 7 F. R. 8910:

Certificate of appointment with power to make and revoke authorizations and to designate supervisors.

Know all men by these presents, that, pursuant to the authority vested in me by Executive Order No. 9095, as amended, I do hereby appoint and designate S. James Crowley, Chief of the Division of Business Operations, and Edward C. Tefft, Chief of the Division of Liquidation, severally, as my agents and delegates to make and to revoke, on my behalf, authorizations of transactions with respect to any property or business enterprise subject to the authority and power conferred upon me; and with respect to any specific property or business enterprise subject to such authority and power to appoint and designate supervisors for such property or business enterprise, who shall have power to make and to revoke, on my behalf, authorizations of transactions.

All transactions, involving any such property, or by, or with, or on behalf of, or pursuant to the direction of, any business enterprise of which I have undertaken the supervision or which has been vested by me or assets of or interests in which have been vested by me, or involving any property in which such business enterprise has any interest, and control of which has been released by the Secretary of the Treasury pursuant to Executive Order No. 9095, as amended, are prohibited unless authorized by me or by one of my said delegates or by a supervisor designated for such property or business enterprise by me or by one of my said delegates.

In testimony whereof, I have hereunto set my hand and seal this 30th day of October, 1942.

LEO T. CROWLEY,
Alien Property Custodian.

11. General Order No. 31, 9 F. R. 7739:

(a) The following transactions are prohibited unless authorized by the Alien Property Custodian, or by an agent and delegate appointed by the Alien Property Custodian, or by a supervisor designated by the Alien Property Custodian or by one of his said agents and delegates as hereinafter provided:

(1) All transactions involving any property, control of which has been released by the Secretary of the Treasury pursuant to Executive Order No. 9095, as amended, subject to the power and authority conferred upon the Alien Property Custodian; and

(2) All transactions by, or with, or on behalf of, or pursuant to the direction of, any business enterprise of which the Alien Property Custodian has

undertaken the supervision, or which he has vested, or assets of or interests in which he has vested, or involving any property in which such business enterprise has any interest, control of such property or business enterprise having been released by the Secretary of the Treasury pursuant to Executive Order No. 9095, as amended.

(b) C. R. Bergherm, as Chief of the Division of Business Operations and Liquidation, Thomas H. Creighton, as Chief of the Property Division, Homer Jones, as Chief of the Division of Investigation and Research, Howland H. Sargeant, as Chief of the Division of Patent Administration, Roger E. Brooks, as Manager of the Honolulu Office of the Office of Alien Property Custodian, Frank J. Garvey, as Assistant to the Alien Property Custodian and Manager of the New York Office of the Office of Alien Property Custodian, Lloyd L. Shaulis, as Secretary, and W. D. Bradford, as Chief of the Non-Enemy Enterprise Section, Division of Business Operations and Liquidation, are hereby appointed and designated, severally, as agents and delegates of the Alien Property Custodian to make and to revoke, on behalf of the Alien Property Custodian, authorizations of transactions with respect to any property or business enterprise (other than a bank, branch of bank, insurance company or branch of insurance company, or any property of a bank, branch of bank, insurance company or branch of insurance company) subject to the authority and power conferred upon the Alien Property Custodian; and with respect to any such specific property or business enterprise subject to such authority and power, to appoint and designate supervisors for such specific property or business enterprise, who shall

have power to make and to revoke, on behalf of the Alien Property Custodian, authorizations of transactions.

(c) Frank J. Garvey, as Assistant to the Alien Property Custodian, is hereby further appointed and designated as agent and delegate of the Alien Property Custodian to make and to revoke on his behalf authorizations of transactions with respect to any bank, branch of bank, insurance company or branch of insurance company, or any property of any bank, branch of bank, insurance company or branch of insurance company, subject to the authority and power conferred upon the Alien Property Custodian, and to designate for any specific bank, branch of bank, insurance company or branch of insurance company, supervisors who shall have power to make and to revoke, on behalf of the Alien Property Custodian, authorizations of transactions.

(d) This regulation supersedes the Certificates of Appointment executed by the Alien Property Custodian October 30, 1942, in favor of S. James Crowley and Edward C. Tefft (7 F. R. 8910), May 8, 1943, in favor of Francis J. McNamara, Homer Jones and Howland H. Sargeant (8 F. R. 6694), September 11, 1943, in favor of Roger E. Brooks (8 F. R. 12839), and April 18, 1944, in favor of Frank J. Garvey (9 F. R. 4485). Nothing contained herein shall affect the validity of anything heretofore done under authority of the aforementioned Certificates of Appointment, nor of anything hereafter done under purported authority of the same which would be valid under authority of this regulation.

Executed at Washington, D. C., on July 10, 1944.

JAMES E. MARKHAM,
Alien Property Custodian.

12. Section 606, Banking Law of the State of New York, as amended Laws 1938, c. 684, §103:

"4. (a) The superintendent may also forthwith take possession of the business and property in this state of any foreign banking corporation, which has been licensed by him under the provisions of this chapter, upon his finding that any of the reasons enumerated in subdivision one of this section exist with respect to such foreign banking corporation or that it is in liquidation at its domicile or elsewhere. After taking possession thereof the superintendent shall liquidate the business and property of any such foreign banking corporation in accordance with the provisions of this chapter applicable to the liquidation of banking organizations; provided, however, that the claims of creditors of such corporation arising out of transactions had by them with its New York agency or agencies or whose names appear as creditors on the books of such agency or agencies shall be preferred against the assets of such corporation in this state without prejudice to their right to share in the other assets of such corporation.

(b) Whenever the claims of such creditors, together with interest thereon, and the expenses of the liquidation have been paid in full, the superintendent upon the order of the supreme court shall turn over the remaining assets to the principal office of such foreign banking corporation, or to the duly appointed domiciliary liquidator or receiver of said foreign banking corporation."